

Highlights of the 2009 Rule Amendments

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The following is a list of rule amendments that have gone into effect since January 1, 2009, or that will go into effect on July 1, 2009. The orders amending these rules can be found on the Internet on the Idaho Judiciary's home page at <http://www.isc.idaho.gov/rulesamd.htm>.

Idaho Appellate Rules

The Appellate Rules Advisory Committee, chaired by Chief Justice Daniel Eismann, met on November 3, 2008, and recommended a number of amendments to the rules. In addition, a subcommittee was appointed at that time to consider a rule on expediting appeals in certain custody cases. The subcommittee's proposal was later circulated and approved by the Committee. Based on the Committee's recommendations, the Supreme Court has adopted the following amendments, effective July 1, 2009.

Rule 5. Special Writs. Currently Rule 5, which addresses filing an original petition for a writ, does not require service on any other parties. Although no response is required unless requested by the court, in some cases it is important that the affected parties be given notice. The amendment adds a provision that, except for petitions filed by prisoners, service by mail is required on all the affected parties. This requirement would also apply to those seeking to intervene in a petition for a special writ. The amendment incorporates into Rule 5 the current Rule 43, which outlines what happens once the court issues a writ or wants a response to a petition. Rule 43 has been eliminated.

New Rule 11.1. Appealable judgments and orders from the magistrate court. This new rule specifies that orders granting or denying a petition for termination of parental rights or adoption are appealable to the Supreme Court as a matter of right.

Rule 12.1. Permissive appeal in custody cases. The amendment adds language that the filing of this motion stays the time for appealing to the district court until the Supreme Court enters an order granting or denying the appeal. Once the appeal is granted the notice of appeal must be filed within 14 days. The appeal will then be expedited as set out in new Rule 12.2.

New Rule 12.2. Expedited review. This new rule sets out the procedure for expediting appeals in custody cases that are brought as a matter of right pursuant to new Rule 11.1 or by permission pursuant to Rule 12.1. The record and transcript must be prepared within 21 days. The appellant has 21 days to file a brief, the respondent then has 21 days to file

a brief and the reply brief is due in 14 days. Oral argument, if requested, must be heard within 120 days of the filing of the notice of appeal.

Rule 13(b)(15). Stay upon appeal – powers of the district court - civil actions. The amendment addresses what happens to a bond or cash deposit when the award itself is upheld but the case is remanded for a new determination of the amount owed, and provides the court may continue or modify the bond. It also provides that any cash deposit may be applied to the judgment upon filing of the remittitur from the Supreme Court.

Rule 17. Notice of appeal – contents. The added language requires the appellant to provide an address, phone number and email address, although no email address is required for parties who are appearing *pro se*. The appellant must specify in the notice of appeal whether the transcript is to be provided in hard copy, electronic format or both.

Rule 31 was recently amended to provide that copies of all exhibits be sent to the Supreme Court instead of the original exhibits. Since many cases have numerous documentary exhibits, copying the exhibits is raising the cost of the record when not every exhibit may be relevant to the appeal. Thus, for civil cases, in an effort to save time and money, the amendment states the appellant must designate the exhibits that are to be copied and sent to the Supreme Court. The changes to this rule are also reflected in the form for the notice of appeal.

Rule 18. Notice of cross-appeal - contents. The same amendments that are made to Rule 17 are made to this rule.

Rule 19. Request for additional transcript or clerk's or agency's record - payment. The amendment requires the person making the request to specify the format for any additional transcript. The subsection on requesting compressed format has been deleted as compressed format is now required. The amended form reflects the approved changes.

Rule 24(a). Reporter's transcript – number - estimated fees. The reporter is now required to furnish an original hard copy, an additional hard copy and one electronic copy of the transcript to the Supreme Court and the language about a computer searchable disk in ASCII format has been eliminated. The reporter is to prepare one copy of the transcript for the appellant and one for the respondent with each electing whether to receive it in hard copy or electronic format. Once the cost of the original transcript has been paid, an additional copy in electronic format may be obtained for \$20.00.

Rule 25(f). Reporter's transcript - contents - recorded testimony. The amendment clarifies the rule is referring only to transcribing previous testimony taken under oath, such as from a preliminary hearing or deposition, and does not refer to recorded evidence, such as a traffic stop or recorded drug buy.

Rule 26. Preparation and arrangement of reporter's transcripts. The compressed format for transcripts is required. The rule as amended also requires a notice of lodging be filed

by the reporter once all transcripts requested from that reporter have been completed and lodged. The notice is to be file stamped and made part of the clerk's record.

Rule 28(b). Preparation of clerk's or agency's record - content and arrangement. The notice of lodging filed by the reporter has been added to the standard record in both civil and criminal cases on appeal.

Rule 29(b). Settlement and filing of reporter's transcript and clerk's or agency's record. The language referring to the number of transcripts filed with the Supreme Court is updated to conform to the other rule amendments.

Rule 30(a). Augmentation or deletions from transcript or record. The amendment deletes the sentence referring to the number of copies required in Rule 32(e) since the number of copies for motions to augment is different than other motions.

New Rule 30.2. Augmentation of record on appeal with copy of an ordinance. The new rule allows a party to file a motion to augment the record on appeal with an ordinance by filing a certified copy of the ordinance and a statement that it was in effect at the time of the action or occurrence at issue in the appeal. The same may be accomplished by stipulation.

Rule 31(a)(1). Exhibits, recordings and documents. The amendment specifies that it is copies of requested exhibits that are sent to this court on appeal in civil cases, and adds a provision that pictures or depictions of child pornography are not to be sent to the Supreme Court in criminal appeals unless specifically ordered by the court.

Rule 35. Content and arrangement of briefs. A statement has been added that all references to a minor shall be by use of initials or a designation other than a minor's name. Now that many briefs are being scanned and placed on Westlaw and Lexis this action is being taken to protect the minor's privacy.

Rule 41(d). Attorney fees on appeal. A reference to paralegal fees has been included in the amount of fees, similar to Rule 54 of the Civil Rules of Procedure.

Rule 47. Service of court opinions, orders, and other documents by the clerk. With the exception of parties appearing *pro se*, all parties must provide an email address, and attorneys representing a person on appeal must provide a current email address to the Idaho State Bar.

Idaho Rules of Civil Procedure

The Civil Rules Advisory Committee, chaired by Justice Warren Jones, met on January 9, 2009, and recommended the adoption of new Rule 45(i) on Interstate Depositions and Discovery, which is based on the Uniform Interstate Deposition and Discovery Act approved by the National Conference of Commissioners in August of 2007. The Supreme Court has adopted this new rule effective July 1, 2009.

Rule 28(e). Depositions to be used in other states. Effective July 1 this rule will be repealed, as the subject matter will be covered in new Rule 45(i).

New Rule 45(i)(1) – (8). Interstate depositions and discovery. Under this rule, litigants can present a subpoena issued by the trial state to the clerk of the Idaho court where discoverable materials are sought. Once the clerk receives the foreign subpoena, the clerk will issue a subpoena for service on the person or entity to which the original subpoena was directed. The rule requires minimal judicial oversight and eliminates the need for obtaining local counsel in Idaho, or for filing a miscellaneous action in the discovery state. Discovery authorized by the subpoena is to then comply with the rules of the state in which the discovery occurs. This is a rule that will not have much impact on Idaho lawyers. An Idaho lawyer will only be involved should the subpoena be challenged. While the court rules do not generally have comments, comments are included in this rule. The comments are needed to help out of state attorneys and the comments conform to the uniform act.

Rule 83(a). Appeals from decisions of magistrates. The amendment references the fact that appeals in certain custody cases must be taken directly to the Supreme Court.

Idaho Criminal Rules

The Criminal Rules Advisory Committee, chaired by Justice Roger Burdick, met on September 5, 2008. At that time a subcommittee was appointed to develop a proposed rule on the procedure for arraignments on probation violations that was later approved by the Committee. The Supreme Court has approved the following amendments, effective July 1, 2009.

Rule 5. Initial appearance before magistrate - Advice to defendant - Plea in misdemeanors - Initial appearance on grand jury indictment. The amendment eliminates language referring to probation violations since a new rule has been adopted specifically dealing with this.

New Rule 5.3 Initial appearance on probation violations. The new rule sets out the procedure to be followed whether the arrest is pursuant to an arrest warrant issued by the court or pursuant to an agent's warrant. It also provides for a finding of probable cause if pursuant to an agent's warrant, setting of bail if appropriate, and a time frame for transporting probationers to the sentencing county if in custody. Though not part of the rule, the Idaho Department of Correction is also making changes to the information on the agent's affidavit and warrant.

Rule 29(a). Motion for judgment of acquittal. A sentence has been added that, in the event the court dismisses the charged offense, the court must consider whether the evidence would be sufficient to sustain a conviction on a lesser included offense.

Rule 33.3. Evaluations of persons guilty of domestic assault or domestic battery. The amendment to this rule was recommended by the Domestic Assault and Battery Evaluator Advisory Board, chaired by Judge Gary DeMeyer. The amendment to the rule updates citations to I.C. § 18-918 and make all references to the Domestic Assault and Battery Evaluator Advisory Board consistent throughout the rule. A reference to “National Criminal History Check” has been added to (c)(2)(k) to clarify what domestic violence evaluators need to obtain from local law enforcement when conducting a criminal records check in the course of an evaluation. The amendments to this rule took effect on March 1, 2009.

Idaho Misdemeanor Criminal Rules and Infraction Rules

The Misdemeanor/Infraction Rules Committee met on August 29, 2008, with Vice-Chair, Judge Michael Oths, and recommended several amendments. The amendments took effect on February 1, 2009, with the exception of the amendment to Rule 5. The citation forms must be amended by July 1, 2009, although they can be amended sooner.

New Misdemeanor Rule 2.1 and a New Infraction Rule 2.1. Social Security Numbers. These new rules provide that only the last 4 digits of social security numbers should be used on filed documents.

Misdemeanor Rule 5. Uniform Citation. A box has been added to the uniform citation form for officers to indicate whether a commercial vehicle is involved.

Misdemeanor Rule 13(b). Bail Schedule. A higher bond for second and third offenses for driving without privileges was added. In addition, the bonds on certain Department of Transportation permit offenses have been raised.

Misdemeanor Rule 14(b). Disposition of citations by written plea of guilty – Limitations - Deferred payment agreements. This rule sets a limit on the offenses where a written plea of guilty and fine can simply be mailed to the court without a court appearance and a limit of \$194 now applies to permit offenses from the Department of Transportation. This amount has been raised to \$500 so that citations for these offenses may be mailed to the court with payment.

Infraction Rule 9(b). Judgment- Fixed penalty for infractions. A fixed penalty for speeding in a school zone was added in the amount of \$100 plus court costs for a total of \$141.50.

Idaho Rules of Evidence

The Evidence Rules Advisory Committee, chaired by Chief Judge Karen Lansing, met on June 16, 2008, and recommended the following rules that were adopted effective January 1, 2009.

Rule 803(23) Medical or dental tests and test results for diagnostic or treatment purposes.

This new rule allows for the admission of a written, graphic, numerical, symbolic or pictorial representation of the results of medical or dental tests performed for purposes of diagnosis or treatment for which foundation has been established pursuant to Rule 904, unless the sources of information or other circumstances indicate lack of trustworthiness.

Rule 904. Authentication of medical or dental tests and test results for diagnostic or treatment purposes. This new rule provides that the requirement of authentication as a condition precedent to admissibility of items described in Rule 803(23) is satisfied by a showing that the proposed exhibit identifies the person or entity who conducted or interpreted the test, the name of the patient, and the date when the test was performed, and that notice was given in accord with subsection (2) of the rule. The rule also has a subsection on objections.

Idaho Juvenile Rules

The Juvenile Rules Advisory Committee is chaired by Judge John Varin.

Rule 19. Standard for commitment to the Department of Juvenile Corrections. The Idaho Supreme Court recently amended I.J.R. 19 to require a screening team be convened before a juvenile offender is committed to the Idaho Department of Juvenile Corrections. The rule notes the composition of the team and the factors the team is to consider. This amendment was effective January 28, 2009.

Rule 49(a). Right of appeal (C.P.A.) The amendment adds a sentence advising that a party may also seek permission to appeal to the Supreme Court pursuant to I.A.R. 12.1.

Idaho Court Administrative Rules

Rule 32. Records of the judicial department – examination and copying - Exemption from and limitations on disclosure. The Rule 32 Committee is chaired by Justice Jim Jones and there were a number of amendments to this rule that were effective February 1, 2009.

Arrest warrants are exempt from disclosure for the protection of officers and so that the persons who are named in the warrants are not given the opportunity to conceal themselves or flee. The amendment to the rule excepts bench warrants from this exemption, since bench warrants are generally issued in open court.

The rule was amended to clarify that screening reports prepared by Family Court Service Coordinators or their designees are exempt from disclosure. Many appellate cases bear “John Doe” or “Jane Doe” titles, making it difficult to distinguish one case from another by their titles. The rule was amended to allow for other anonymous designations, such as fictitious names or initials. The rule was also amended to permit the temporary sealing or redacting of court records to preserve the right to a fair trial.

The rule will now allow an extension of the time for response to a public records request from three working days to ten working days when the longer period of time is needed to locate or retrieve the requested records. This is consistent with the public records statutes.

The fee for copying judicial records that are not in a case file may now be set either by the Supreme Court or the Administrative District Judge. The rule as amended clarifies that the provisions of Idaho Code § 9-338(8) apply to these requests. This will allow for the charging of a fee for the labor costs associated with locating and copying records when: (1) the request is for more than 100 pages of paper records; (2) the request includes records from which nonpublic information must be deleted; or (3) the actual labor associated with locating and copying the records exceeds two person hours.

Rule 47. Criminal History Checks. This rule was amended effective March 24, 2009, and allows the Supreme Court to utilize an individual's criminal history check more than once if an individual seeks to be placed on multiple Supreme Court rosters without requiring the individual to undergo multiple checks so long as the fingerprints are not more than one year old.

The various rules advisory committees meet annually as the need dictates. Agenda items may be submitted to the chair of the particular committee or to me, as reporter for the committees. A listing of Supreme Court Committees and their membership can be found at <http://www.isc.idaho.gov/commlist.html>.

